

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2011 MAR -4 P 4:08  
BY RONALD R. CARPENTER  
CLERK

NO. 83606-0 and 83130-1

SUPREME COURT OF THE STATE OF WASHINGTON

---

IN RE THE PERSONAL RESTRAINT OF  
DAROLD R. J. STENSON,  
Petitioner.

---

REQUEST FOR ORAL ARGUMENT

---

Sheryl Gordon McCloud  
710 Cherry St.  
Seattle, WA 98104-1925  
(206) 224-8777  
Attorney for Petitioner  
Darold R. J. Stenson

FILED AS  
ATTACHMENT TO EMAIL

ORIGINAL

RAP 16.3 provides that where, as here, a non-frivolous PRP returns to this Court following a reference hearing, "Oral argument is governed by rule 16.1(c)." Rule 16.11(c) in turn provides that a non-frivolous PRP will be decided by "the panel of judges, with or without oral argument."

This Court thus has the discretion to order oral argument on Mr. Stenson's pending PRP. We respectfully suggest that this Court might benefit from argument for the following three reasons.

1. **The number of briefs and arguments:** The parties have filed numerous briefs addressing legal issues ranging from gatekeeping to the merits of the Brady and Napue claims. No one brief addresses all of the issues together. Oral argument might provide a forum for the parties to address questions about all of the issues before this Court, including the relationship of one issue to another.

2. **The complexity of the facts:** This PRP is based on a lengthy trial transcript along with a reference hearing transcript and volumes of prior counsel files, prior post-conviction motions and decisions, and newly discovered evidence that casts the facts presented at trial in a different light. The new facts are memorialized in not just the briefing before this Court, but also in

the briefing and evidence presented to the Clallam County Superior Court. Oral argument might help to clarify the facts and to focus on which facts are most important.

3. **The importance of transparency in consideration of the issues:** The public has an interest in whether a death sentence is imposed for a variety of reasons, from justifiable concerns about the sanctity of life and the value of error-correction in the judicial system, to justifiable concerns about the importance of achieving finality in judicial proceedings. The public also has an interest in learning about, preventing, and providing remedies for, prosecutorial suppression of evidence. Where, as here, the defendant claims that prosecutorial suppression of evidence altered the outcome of a death penalty case, full disclosure of the allegations and defenses to the public is the most advisable course. Oral argument could provide just such transparency.

//

//

//

For the foregoing reasons, petitioner Mr. Stenson, by and through counsel, requests an opportunity to present oral argument.

DATED this 4th day of March, 2011.

Respectfully submitted,

s/Sheryl Gordon McCloud  
Sheryl Gordon McCloud, WSBA #16709  
Law Offices of Sheryl Gordon McCloud  
710 Cherry Street  
Seattle, WA 98104-1905  
(206) 224-8777; (206) 623-5951 (fax)  
sheryl@sgmccloud.com

CERTIFICATE OF SERVICE

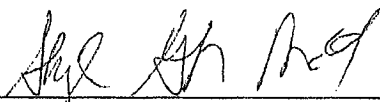
I certify that on the 4<sup>th</sup> day of March, 2011, a true and correct copy of the foregoing was served upon the following individuals via email:

Pamela B. Loginsky  
[pamloginsky@waprosecutors.org](mailto:pamloginsky@waprosecutors.org)

Deborah Kelly  
[dkelly@co.clallam.wa.us](mailto:dkelly@co.clallam.wa.us)

I further certify that on the 4<sup>th</sup> day of March, 2011, a true and correct copy of the foregoing was served upon the following individual by depositing same in the U.S. Mail, first-class, postage prepaid:

Darold R. J. Stenson, #232018  
WSP, Unit IMU, D4  
1313 North 13th Avenue  
Walla Walla, WA 99362-1064

  
\_\_\_\_\_  
Sheryl Gordon McCloud



NO. 83606-0 and 83130-1

SUPREME COURT OF THE STATE OF WASHINGTON

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2011 MAR -4 P 4:08  
BY RONALD B. CARPENTER  
CLERK

IN RE THE PERSONAL RESTRAINT OF

DAROLD R. J. STENSON,

Petitioner.

ERRATUM

Sheryl Gordon McCloud  
710 Cherry St.  
Seattle, WA 98104-1925  
(206) 224-8777  
Attorney for Petitioner  
Darold R. J. Stenson

FILED AS  
ORIGINAL ATTACHMENT TO EMAIL

Defense counsel hereby withdraws an assertion made on pages 3 and 5 of the recently-filed Petitioner's Brief Addressing Reference Court's Findings of January 20, 2011. We withdraw the assertion that Mr. Stenson's trial counsel never had a copy of the bench notes prepared by Mr. Grubb, which are now contained in Appendix B of the state's most recent brief.

DATED this 4th day of March, 2011.

Respectfully submitted,

s/Sheryl Gordon McCloud  
Sheryl Gordon McCloud, WSBA #16709  
Law Offices of Sheryl Gordon McCloud  
710 Cherry Street  
Seattle, WA 98104-1905  
(206) 224-8777; (206) 623-5951 (fax)  
sheryl@sgmccloud.com



CERTIFICATE OF SERVICE

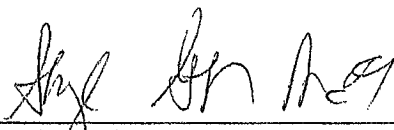
I certify that on the 4<sup>th</sup> day of March, 2011, a true and correct copy of the foregoing was served upon the following individuals via email:

Pamela B. Loginsky  
[pamloginsky@waprosecutors.org](mailto:pamloginsky@waprosecutors.org)

Deborah Kelly  
[dkelly@co.clallam.wa.us](mailto:dkelly@co.clallam.wa.us)

I further certify that on the 4th day of March, 2011, a true and correct copy of the foregoing was served upon the following individual by depositing same in the U.S. Mail, first-class, postage prepaid:

Darold R. J. Stenson, #232018  
WSP, Unit IMU, D4  
1313 North 13th Avenue  
Walla Walla, WA 99362-1064



---

Sheryl Gordon McCloud



RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

2011 MAR -4 P 4:08

BY RONALD R. CARPENTER

CLERK

NO. 83606-0 and 83130-1

SUPREME COURT OF THE STATE OF WASHINGTON

---

IN RE THE PERSONAL RESTRAINT OF

DAROLD R. J. STENSON,

Petitioner.

---

DECLARATION RE: ERRATUM

---

Sheryl Gordon McCloud  
710 Cherry St.  
Seattle, WA 98104-1925  
(206) 224-8777  
Attorney for Petitioner  
Darold R. J. Stenson

FILED AS  
ATTACHMENT TO EMAIL

ORIGINAL

I, Sheryl Gordon McCloud, do state:

1. On March 2, 2011, counsel for petitioner received an electronic copy of the state's brief, which included a reference to Appendix B, a 37-page document containing the bench notes of Michael Grubb, the state's blood stain expert at the 1994 trial.

2. In petitioner's simultaneously-filed brief to this Court, we had asserted that those Michael Grubb notes had never been provided to Stenson's trial counsel and only came to light in December, 2008. The state's exhibit, however, shows that trial counsel did in fact have access to these notes no later than July 29, 1994.

3. To the best of my knowledge, until I saw the state's brief, I had never seen the full document contained in Appendix B – with the fax cover page and date stamp – and was not aware of its existence. None of my co-counsel or our investigators who have worked on this case recall ever having seen that document before, nor do they recall having seen any other evidence that Stenson's trial lawyers had received copies of Grubb's bench notes indicating the existence of a fold-over shadow stain.

4. Current counsel for Mr. Stenson, along with investigators and paralegals working at our direction, have spent

hundreds of hours over the past several years reviewing prior counsel's files. None of us recall ever having seen that document before receiving it from the Washington State Patrol Crime Lab in 2008.

5. Upon reviewing state's Appendix B, we initiated yet another review of all prior counsel's files in our possession, comprising more than 30 file boxes of materials. By the end of the day on March 3, 2011, we located a copy of the document contained in state's Appendix B.


6. The state is correct in asserting that Stenson's trial counsel had access to Michael Grubb's notes referring to the fold-over blood stain, and we were incorrect in asserting otherwise. We apologize to the Court and to counsel for the error and retract that assertion.

7. We believe, however, that issues concerning blood stain analysis remain a viable part of Mr. Stenson's *Brady* claim. Although the state characterizes the blood stain argument as a new, independent, and belated legal claim, it is not. Rather, the argument was made in direct response to Judge Williams' comment in his April 2010 findings that the GSR revelations had no effect on the blood stain evidence. Stenson's supplemental briefing

responded to that assertion by showing how contamination of the pants would have led, and did lead, to a renewed inquiry into blood stain evidence, which in turn produced a new and favorable expert opinion on the origin of the left leg stains. That argument does not constitute a new independent *Brady* claim, only a development of the original claim, and it remains in force despite counsel's factual error concerning the Grubb bench notes. Nevertheless, we sincerely apologize for that error.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 4<sup>th</sup> day of March, 2011, in Seattle, Washington.

A handwritten signature in black ink, appearing to read "Sheryl Gordon McCloud", written over a horizontal line.

Sheryl Gordon McCloud

CERTIFICATE OF SERVICE

I certify that on the 4<sup>th</sup> day of March, 2011, a true and correct copy of the foregoing was served upon the following individuals via email:

Pamela B. Loginsky  
[pamloginsky@waprosecutors.org](mailto:pamloginsky@waprosecutors.org)

Deborah Kelly  
[dkelly@co.clallam.wa.us](mailto:dkelly@co.clallam.wa.us)

I further certify that on the 4th day of March, 2011, a true and correct copy of the foregoing was served upon the following individual by depositing same in the U.S. Mail, first-class, postage prepaid:

Darold R. J. Stenson, #232018  
WSP, Unit IMU, D4  
1313 North 13th Avenue  
Walla Walla, WA 99362-1064



---

Sheryl Gordon McCloud

